IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4367 OF 2003

Shri. Vasudev Khocharmal Agarwal
and Ors. ... Petitioners

Versus

State of Maharashtra & Ors. ... Respondents

Mr. Madhav J. Jamdar for Petitioner.

Mrs. S.S. Bhende, A.G.P. for R. Nos. 1, 2 and 4.

Mr. P.S. Dani for R. No. 5.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : MARCH 09, 2005

P.C.

1. The Judgement of the Full Bench has been stayed by the Apex Court. In so far jurisdiction of authority under M.C.S. Act to make recoveries of amount advanced over Rs. 10 lakhs. It is therefore, open to the cooperative Banks to recover the amounts due. In the light of that no interference is called for.

2. The second contention is to the validity of Section 101. A Division Bench of this Court in Ms. Annapurna Engineering Corporation and others vs. State of Maharashtra and Other in W.P. No. 7489 of 2004 decided on 11.6.2003 has upheld the

validity of Section. Hence, the second contention also no longer available.

3. It is then the case of the Petitioner that he has also challenged the constitutional validity of Section 154(2A) of the Cooperative Societies Act. The case of the petitioner is that Section 154(2A) is unconstitutional on the ground that there is no discretion in the Revisions Authority to waive deposit even in a fit and deserving case.

. The provisions of the M.C.S. Act governs relationship between the society on the one hand and its members on the other. In the case of Cooperative Banks, disputes are mainly in respect of loans advanced by the banks to its members and guarantees by other members. In other words, they constitute a class by themselves. Section 101 enables the Banks to apply for recovery certificate under the M.C.S. Act. Amongst those who can take recourse to section 101 are the urban banks for recovery of arrears of its dues. It is therefore, clear that Section 154(2A) has to be read with Section 101, validity of which has been upheld by the Division Bench of this Court in Ms. Annapurna Engineering Corporation and Ors. (supra) Once therefore, the constitutional validity of section

101 has been upheld, the issue is whether because there is no discretion in the Registrar to dispense with deposit, whether Section 154(2A) can be said to be unconstitutional. It is not as if Section like Section 154(2A) has been introduced for the first time by the legislature. The Act considering the nature of the dispute and the controversy has provided only for a revision. Section 154(2A) reads as under :

> "No application for revision shall be entertained against the recovery certificate issued by the Registrar under Section 101 unless the applicant deposits with the concerned society fifty per cent amount of the total amount of recoverable dues."

Such sections are found in the large number of legislations, like Workmanly Compensation Act which requires that before filing an appeal the amount awarded has to be deposited. In the motor Vehicles Act in which in respect of awards of tribunal, there is requirement of depositing a specific amount as prescribed without which no appeal can be entertained. In other words, it is open to the legislature to make a condition of deposit, a

prerequisite for hearing the appeal or revision. There is no dispute that the legislature has no competence. The contention is that the non-confering of discretion on the Tribunal to waive deposit is violative of Article 14 of the Constitution and would make the remedy illusory. We are dealing with moneys advanced by the society to its members. The pre deposit is not 100% of the certificate. The deposit is 50% of the amount recoverable under the certificate. It cannot be said that this was not within the legislative competence or would render the power of revision illusory considering the class of borrowers. We are clearly of the opinion therefore, that section 154(2A) cannot be said to be unconstitutional or beyond legislative competence. We therefore, reject the said contention.

4. Having held so, if the petitioners deposit before the Revisional Authority, 50% of the amount as set out in the certificate within four weeks from today, the Revision to stand restored. The revisional authority then to proceed according to law. If the amount is not deposited, the order of revisional authority to stand confirmed. Petition stands disposed of accordingly. No order as to costs.

. The learned counsel for the Petitioner seeks stay of this order. This is not a fit case to grant stay. Hence, application for stay is rejected.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)